There is nothing on the record to indicate whether there was an application by the Public Prosecutor nor whether the appellants consented to being tried by the Sessions Court.

The appellants were arrested on the 7th December, 1953, and appeared before the Sessions Court on the 14th December. They were charged, claimed trial and were released on bail. Mr. Rawson appeared on that day to apply for bail, and the Public Prosecutor was represented by a prosecuting police officer who was instructed to inform the Court that the prosecution would be conducted by a Deputy Public Prosecutor. The trial took place on the 18th February, 1954, and for the first time Mr. Rintoul appeared for the first appellant and Mr. Doraisamy Iyer for the second appellant.

Sir Roland Braddell appearing for the 1st appellant (on this appeal) stated that in fact the consent of the appellants to be tried by the Sessions Court was not obtained.

The Deputy Public Prosecutor submitted, in essence, that the appearance of a Deputy Public Prosecutor to prosecute and the fact that both appellants were represented by Counsel at the trial were sufficient indication that the two conditions laid down in section 63(2) had been complied with. He went on to submit that paragraph 17 of the learned President's grounds of judgment indicated that the two conditions had been complied with. He further submitted that nothing was laid down in section 63(2) as to the procedure which had to be followed by a Sessions Court to insure compliance with these conditions. He has argued further that, at the most, there was only an irregularity which was capable of being cured.

I found myself unable to agree with these submission of the Deputy Public Prosecutor. A Sessions Court is vested with jurisdiction to try cases punishable with sentences of imprisonment in excess of seven years, only if two conditions contained in the Courts Ordinance have been complied with. In cases of this nature, jurisdiction is conferred on a Sessions Court only if the Public Prosecutor applies for the case to be so tried, and the accused consents to being so tried. I cannot accept the contention that these two conditions are but mere formalities, and the fact that the case was tried to a conclusion indicated that these conditions had been complied with. There is nothing in the section which requires a Sessions Court to record that these conditions have been complied with, but unless they have been complied with, the Sessions Court is without jurisdiction.

Neither the Deputy Public Prosecutor nor any of the Counsel who appeared for the defence was present when the appellants were charged, and they claimed trial, on 14th February, 1954. It was before they were charged that the learned President should have satisfied himself that he had jurisdiction.

The two conditions must be strictly complied with; there must be an application and there must be a consent. I am not satisfied in this case that this was so. The law requires that the consent of the accused should be obtained before the Sessions Court has jurisdiction, and it must be a positive consent and not one based on acquiescence. In this case it would appear that there was no strict compliance with section 63(2) of the Courts Ordinance.

As was said in *Mohindar Singh v. The King*[1], [(1950) A.C. at p. 360; (1950) M.L.J. at p. 101]:—

"Strict observance of the law as to jurisdiction is one of the fundamental rules in the administration of justice".

I am satisfied in this case that the Sessions Court had no jurisdiction to hear this case, and I must therefore set aside the convictions and sentences.

The proceedings before the Sessions Court being a nullity, it is for the Public Prosecutor to take such further steps as he considers desirable.

Convictions & sentences set aside.

Solicitors for the appellants: *Braddell & Ramani.*

Re LIM KWANG TEIK & ORS.

[A. Cr. J. (Spenser Wilkinson, J.) May 31, 1954]

[Penang — Criminal Revision No. 17 of 1954]

Common Gaming Houses Ordinance 1953 — Proof of lawful entry into premises — Evidence Ordinance s. 114.

In this case the learned Magistrate had held at the trial of the accused on a charge under the Common Gaming Houses Ordinance 1953 that no *prima facie* case had been made out against them. No reasons were given for this decision but it appeared that Counsel for the accused had submitted that the presumptions laid down in the Ordinance could not be raised against the accused because the entry into the house was not made under the provisions of the Ordinance.

Held: (1) where as in this case a senior police officer gave evidence that he raided a particular house upon information then in the absence of anything else it may be presumed that the raid was carried out regularly and in accordance with the provisions of s. 18(1)(d) of the Common Gaming Houses Ordinance and therefore the presumptions laid down in the Ordinance could be raised against the accused.

Cases referred to:—

(1) *Low Wah v. Public Prosecutor* 7 F.M.S.L.R. 197.

(2) *Public Prosecutor v. Eng Lim & Ors.* (1947) M.L.J 78.

MAGISTRATE'S CRIMINAL APPEAL.

J. D. Peterkin (Federal Counsel) for the Crown.

Lim Kheng Kooi for the accused.

Spenser Wilkinson, J. : — In this case an Assistant Superintendent of Police on information received raided a house in Sungei Bakap. As the raiding party approached the house a number of people rushed out of the house scattering in all directions attempting to escape. The Assistant Superintendent of Police while trying to stop one of these men was assaulted and brought to the floor but succeeded in freeing himself and pushing his assailant into the house. As the raiding party entered the house there was a sound of other people trying to break through the attap wall of the house and climbing up the wall in order to escape. Two men were found hiding behind a mosquito net in a room and under one of them was found a bundle of notes and under the bed a number of cards, sixteen in all, were also found.

At the conclusion of the case for the prosecution the learned Magistrate held that no *prima facie* case had been made out against the accused and acquitted and discharged them. No reasons were given for this decision and Counsel for the accused on the revision who had appeared in the Court below, informed me that he had made a submission to the effect that the presumptions laid down in the Common Gaming Houses Ordinance, 1953 could not be raised against the accused because the entry into the house was not made under the provisions of the Ordinance.

I would remark in the first place that Magistrates should make a note of submissions made by Counsel.

On the hearing of the revision before me Mr. Lim Kheng Kooi on behalf of all the accused again submitted that there was no case against the accused because entry into the premises had not been made strictly in accordance with the Ordinance and therefore no presumptions against them could be raised. He relied on the cases of *Low Wah v. Public Prosecutor*[1] and *Public Prosecutor v. Eng Lim & Ors.*[2].

These cases decide that unless the entry into the premises has been made in accordance with the provisions of the Ordinance the presumptions against the accused cannot be raised.

In the judgment of Laville J. in *Public Prosecutor v. Eng Lim & Ors.*[2] there are various *dicta* to the effect that the conditions laid down in what is now section 18 of the Ordinance cannot be assumed but must be proved positively. With the greatest respect it appears to me that these *dicta* ignore the clear provisions of section 114 of the Evidence Ordinance, Illustration (e) of which reads as follows :—

> "The Court may presume —
> (e) that judicial and official acts have been regularly performed;"

Whilst it is no doubt preferable that in a case of this kind the prosecution should give positive evidence showing that all the conditions necessary to make the entry lawful have been fulfilled I am of opinion that where, as in this case, a Senior Police Officer gives evidence that he raided a particular house upon information received, then in the absence of anything else it may be presumed that the raid was carried out regularly in accordance with the Ordinance.

In this particular case I am satisfied from the evidence on the record that the entry into the premises concerned was in accordance with the provisions of section 18(1)(d) of the Ordinance. Mr. Lim Kheng Kooi argued that because the Senior Police Officer concerned stated that he had received "similar information" twenty-four hours earlier there had been delay as in the case of *Low Wah v. Public Prosecutor*[1], and that this showed that the object of the search would not have been defeated by the delay necessary for the information to be reduced to writing. I am unable to accept this contention. Similar information does not mean the same information, and it may well be that the similar information obtained the night before was not sufficiently reliable or detailed to justify an immediate search. Having obtained further information on the night in question the Senior Police Officer presumably formed the opinion that an immediate raid was necessary; and it seems clear from what happened that any delay in making the raid was in fact likely to defeat the object of the raid. Moreover, in *Low Wah's*[1] case the delay between the information and the raid was three days and therefore the case now before me is quite different.

In view of the fact that there was ample evidence that persons were seen and heard to escape from the premises on the approach of the Senior Police Officer and also that he was unlawfully obstructed and delayed in entering the premises, the presumption arises under section 19 that the place was a common gaming house. Under section 6(2) of the Ordinance any persons found in a common gaming house or found escaping from a common gaming house are to be presumed until the contrary is proved, to have been gaming therein. As all the accused were either found in or found escaping from the premises in question they must be presumed until the contrary is proved to have been gaming therein.

I need not go into the question of whether the sixteen cards found in the premises can be said to be instruments or appliances for gaming within the definition contained in the Ordinance, because the

presumption against these accused is sufficiently raised by the escaping and the obstruction.

For these reasons I remitted the case to the Magistrate in order that the trial should be continued and the accused called upon for their defence.

Order accordingly.

THAM KWA CHIN v. CHOONG HOONG SUM.

[O. C. J. (Spenser Wilkinson J.) May 31, 1954]

[Penang — Civil Suit No. 20 of 1953]

Damages — Negligence — Loss of expectation of life — Measure of Damages — Regard to be had to awards in comparable cases — Statement of Claim, claiming general damages.

In **Benham v. Gambling**[3] the Lord Chancellor laid down the following principles to be applied in cases of this kind:

> "Damages given for the shortening of life should not be calculated solely, or even mainly, on the basis of the length of life that is lost; they should be fixed at a reasonable figure for the loss of a measure of prospective happiness. If, however, the character or habits of the deceased were calculated to lead him to a future of unhappiness or despondency that would be a circumstance justifying a smaller award. No regard must be had to financial losses or gains during the period of which the victim has been deprived, damages being awarded in respect of loss of life, not of loss of future pecuniary prospects. In the case of a child, as in the case of an adult, the proper sum to be awarded should not be greater because the social position or prospect of worldly possession is greater in one case than another."

In assessing the damages and following the principle on question of quantum of damages laid down in **Benham v. Gambling** *supra* it should be borne in mind that the value of the money has fallen very much since that case was decided.

It is neither necessary nor in accordance with the best traditions of pleading to claim any specified sum in a statement of claim when claiming general damages. For general damages the proper prayer is "The Plaintiff claims damages."

Cases referred to:—

(1) *Rushton v. National Coal Board* (1953) 1 Q.B. 495; (1953) 1 All E.R. 314.

(2) *Bird v. Cocking & Sons Ltd* (1951) 2 T.L.R. 1260.

(3) *Benham v. Gambling* (1941) A.C. 157; (1941) 1 All E.R. 7.

(4) *Mohamed Abdul Cader v. Frederick Smith* (1947) M.L.J. 36.

(5) *Edler v. Greenwich & Deptford Hospital Management Committee* (1953) C.L.Y. para 953.

ACTION FOR DAMAGES.

Ng Jit Geow for the plaintiff.

Lim Cheng Ean for the defendant.

Spenser Wilkinson, J.: — Having given judgment in this case in favour of the plaintiff for damages in respect of the negligence of the defendant's driver in knocking down and causing the death of the deceased I reserved judgment on the question of the quantum of damages.

Dealing first with the special damages the amount claimed for funeral expenses is $150 and this figure is not disputed. The amount of $700 claimed for costs for obtaining letters of administration includes a sum of $450 deposited in respect of estate duty. I do not think that this sum can be included in the claim, and the total of the special damages will therefore amount to $400.

There remains the claim in respect of loss of expectation of life. This is a matter which is very difficult to assess. The deceased was a boy of seven in reasonably good circumstances in life and there is no reason to suppose that he would not have led a happy life. In the case of *Rushton v. National Coal Board*[1] it was held, approving the observations of Birkett L.J. in *Bird v. Cocking & Sons Ltd.*[2], that in assessing damages for personal injuries, the Courts, although they cannot apply any uniform standard, will have regard to and be guided by the general principles which have been applied in decisions in comparable cases. I think to some extent this principle applies to damages for loss of expectation of life.

In the case of *Benham v. Gambling*[3] in which the Lord Chancellor laid down the principles to be applied in cases of this kind a sum of £200 was awarded in respect of an infant of 2½ years of age. In *Mohamed Abdul Cader v. Frederick Smith*[4] Worley J. in a very careful judgment, following the principles laid down in *Benham v. Gambling*[3] awarded a sum of $1,500 in respect of a Tamil Mohamedan, aged about 28. That case was decided in 1941 and in view of the change in the value of money since then, I think the award in a similar case would now be considerably higher. In *Edler v. Greenwich & Deptford Hospital Management Committee*[5] Finnemore J. awarded a sum of £350 for loss of expectation of life in respect of a girl of 11, who died owing to the negligence of a doctor.

Following as best I can the indications given by these decisions and taking into account the particular facts of the case before me I have come to the conclusion that the proper sum to award in respect of loss of expectation of life in this case is $3,000.

The sum claimed in the Statement of Claim was $15,000. This in my opinion was fantastic. I would point out that it is neither necessary nor in accordance with the best traditions of pleading to claim any